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10 UNITED STATES BANKRUPTCY COURT
11 EASTERN DISTRICT OF CALIFORNIA
12 SACRAMENTO DIVISION

13 In Re:

14 Victoria Gewalt,

15 Debtor.

Case No. 21-20600-C-11
DCN: RLC-10
Date: June 23, 2021
Time: 11:00 a.m.
Dept: C
Courtroom: 35
Judge. Klein

16 **MOTION TO APPROVE SALE OF REAL PROPERTY, COMPENSATION**
17 **TO BROKER, AND WAIVER OF 14 DAY STAY PERIOD**
18 **[11 U.S.C. §363(f)]**

19 Victoria Gewalt, the Chapter 11 debtor-in-possession in the above captioned case
20 (“Gewalt”), hereby moves for an order approving the sale of real property of the estate
21 commonly known as 4403 Carter Creek #6, Bryan, County of Brazos, Texas.
22 Specifically Lot Unit 30, Bldg C April Court Townhomes. (“Property”) comprising a
23 2-bedroom, 1 bath 1116 square foot residence pursuant to the terms of the Purchase
24 Contract dated and Sale Agreement dated June 11, 2021 between the Debtor and
25 Randal J. Lunsford. A true and correct copy of the Contract is attached to the Exhibits
26 filed in support of the present motion. Debtor anticipates supplementing the record
27 with a copy of the Preliminary Title Report when available.

28 Debtor also requests an order approving compensation to the estate’s real estate
broker, Keller Williams Realty B/V who is the broker employing Mary Whitworth
who is seeking approval of her employment by the estate. In addition, Debtor requests

1 that the 14-day stay period imposed by Federal Rule of Bankruptcy Procedure 6004(h)
2 be waived.

3 Debtor's proposed Plan of Reorganization, as modified, includes a provision for
4 the payment of thirty-five percent (35%) of net proceeds, the holder of the first deed of
5 trust secured by Debtor's residence. See Memorandum of Points & Authorities in
6 Support of Chapter 11 Subchapter V Plan Confirmation at page two, proposed plan
7 modification No. 4. (Docket No. 69). Accordingly Debtor seeks Court approval of
8 disbursement of thirty-five percent (35%) of net proceeds to Class 4 Mechanics Bank.

9 In support of the motion to sell the Debtor represents as follows:

10 1. This Court has jurisdiction over this proceeding pursuant to 11 U.S.C. §363
11 and 28 U.S.C. §§157 and 1334 and Federal Rules of Bankruptcy Procedure, Rules
12 6004 and 9014. This is a core proceeding pursuant to 28 U.S.C. §157(b).

13 2. Gewalt commenced this case as a voluntary Chapter 11 on February 22,
14 2021.

15 3. Among the assets of this bankruptcy estate is Debtor's interest in the 4430
16 Carter Creek, #6, Bryan, Texas property. Debtor had listed the Property prior to the
17 filing of this case. The property was originally listed for \$82,900 in November 2018.
18 The current offer is an all cash with a July 15, 2021 closing date. The price is \$73,000.
19 The property is currently vacant and available for immediate sale.

20 4. The sale is where is, as is, without any warranty express or implied.

21 **TERMS OF THE SALE AGREEMENT**

22 The proposed sale terms are \$73,000 cash. Buyer's contract requires closing
23 prior to July 15, 2021.

24 **PROPOSED OVERBID PROCEDURES**

25 Subject to Bankruptcy Court Approval, the Debtor requests approval of overbid
26 procedures that require a proposed overbidder, prior to the hearing on this motion, to
27 provide counsel for the Debtor a deposit by cashier's check in the amount of \$10,000
28 (\$9,000 deposit and 1st overbid in the amount of \$1,000) and provide proof of funds

1 for the balance of the purchase price. Any overbidding shall proceed in increments of
2 as determined by the Court. In the event the overbidder is unable to complete the sale
3 within 5 days of the hearing the deposit shall be retained by the estate as liquidated
4 damages.

6 BASIS FOR APPROVAL OF SALE

7 Under Section 363(b)(1) of the Bankruptcy Code, a revested Debtor acting as
8 Plan Administrator has the powers of a trustee and acting as trustee, may, after notice
9 and hearing, use, sell or lease other than in the ordinary course of business, property of
10 the estate. Approval of a transaction subject to Section 363 is within the sound
11 discretion of the Court. In re Lionel Corp., 722 F. 2nd 1063, 1071 (2nd Cir. 1983); In re
12 Baldwin-United Corp., 43 B.R. 888, 905 (Bankr. S.D. Ohio 1984). In evaluating
13 whether a transaction is based upon a sound business purpose the Court should
14 consider all salient factors pertaining to the proceeding and act upon the diverse
15 interests of the debtor and creditors. Here Gewalt with the assistance of an
16 experienced local realtor has marketed the property. These marketing efforts resulted
17 in several offers; the best is the Lunsford all cash offer. See Exhibits to Motion for
18 Sale.

19 11 U.S.C. §363(f) provides for a sale free and clear of any interests. Section
20 363(f) authorizes a sale where: (1) applicable nonbankruptcy law permits sale of such
21 property free and clear of such interests; (2) such entity consents; (3) such interest is a
22 lien and the price at which such property is to be sold is greater than the aggregate
23 value of all liens of such property; (4) such interest is in bona fide dispute; (5) such
24 entity could be compelled, in a legal or equitable proceeding, to accept a money
25 satisfaction of such interest. Gewalt is aware of one consensual lien¹ secured by the
26 real property as well as property taxes. She estimates that after satisfaction of the
27

28 ¹ Prosperity Bank, see POC-9 filed May 21, 2021.

1 consensual lien, payment of property taxes and costs of sale the proposed sale will net
2 approximately \$57,000 for the estate.

3 11 U.S.C. §363(f) (2) provides that a trustee (or debtor in possession acting as
4 trustee) may sell property free and clear of any interest in such property of an entity
5 other than the estate if such entity consents. Debtor believes that all liens secured by
6 the property will be paid in full. Therefore, the motion of the Debtor under Section
7 363(f) is proper, and the motion should be granted in its entirety.

8 **BASIS FOR APPROVAL OF BROKER'S COMPENSATION**

9 11 U.S.C. 330(a)(1)(A) authorizes the court to award to a professional person
10 "reasonable compensation for actual, necessary services." The Debtor requests that
11 the Court approve the Broker's commission in the amount of \$4,380 (6% of the gross
12 sale price), or the appropriate commission resulting from a successful overbid. The
13 contractual commission fee charged is a reduction from the six percent originally
14 agreed to and is a reasonable charge for similar work performed in similar matters, and
15 the compensation sought by the Broker is not inconsistent with that authorized in
16 similar cases. Broker was employed by Debtor prior to the filing of the present case.

17 **BASIS FOR WAIVER OF FRBP 6004(h)**

18 Debtor does not anticipate any opposition to this motion. The proposed sale
19 terms require a very prompt closing and generates funds adequate to pay secured
20 claims as generate a significant surplus for the estate. Further, the Buyer desires
21 immediate ownership and was prepared to close within days of the original offer. The
22 Sale contract requires a closing no later than July 15, 2021. Accordingly, Debtor
23 requests that the 14 day stay period imposed by Federal Rule of Bankruptcy Procedure
24 6004(h) be waived so that the sale can move forward immediately upon entry of the
25 Court's order approving sale.

26 **WHEREFORE**, Debtor requests an order:

27 A. Authorizing the conclusion of the proposed sale.

28 B. Authorizing the Debtor to execute any and all instruments, documents and

1 agreements necessary to and for the sale of the Assets of the Debtor and to take any
2 and all actions necessary or appropriate to perform, undertake, consummate,
3 implement and close the sale, transfer and conveyance of the Assets, including,
4 without limitation, executing all additional instruments, documents and agreements as
5 may be necessary, expedient or proper to complete any and all confirmations,
6 acknowledgments, conveyances, transfers, sales, grants, assignments, and/or
7 subordinations;

8 C. That the Bankruptcy Court shall retain jurisdiction and power of any action,
9 proceeding, dispute and/or matter arising under, arising out of, or related to or
10 encompassed by this motion or the sale that is the subject of this motion.

11 D. Approving the payments of realtor commissions and ordinary and
12 customary costs of sale.

13 E. Payment of thirty-five percent (35%) of net proceeds to Mechanics Bank.

14 F. Waiver of the stay imposed by Federal Rule of Bankruptcy Procedure
15 6004(h) and;

16 G. For any and all such further relief as the Court deems just and proper.

17
18 Dated: June 14, 2021

REYNOLDS LAW CORPORATION

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20 

/s/ Stephen M. Reynolds

Stephen M. Reynolds

Attorneys for Victoria Gewalt